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Message Text

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67
ACTION ARA-10

INFO OCT-01 ISO-00 CIAE-00 INR-07 IO-13 JUSE-00 NSAE-00

SNM-02 TRSE-00 USIA-06 NSC-05 OES-06 OMB-01 SCS-03

SCA-01 L-03 H-02 DHA-02 PA-01 PRS-01 EUR-12 /076 W
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R 132207Z APR 76
FM AMEMBASSY BOGOTA
TO SECSTATE WASHDC 4568
INFO DEA WASHDC
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DEPT FOR S/NM, ARA AND SCA

CARACAS FOR DEA

EO: 11652: N/A
TAGS: SNAR CO
SUBJ: NARCOTICS: NEW CONTROVERSIAL GOC DECREE LAW AIMS AT BETTER DEFINITION OF SIMPLE DRUG POSSESSION VERSUS TRAFFICKING

REF: BOGOTA 2702

SUMMARY: DESPITE GENERALLY NEGATIVE LOCAL PRESS PLAY, GOC IS PRESSING FORWARD WITH PLANS TO MODIFY EXISTING DRUG LAWS TO BETTER DEFINE (REFTEL) THE DIFFERENCE BETWEEN SIMPLE POSSESSION AND NARCOTICS TRAFFICKING. DECREE LAW ISSUED APRIL 9 DEFINES VARIOUS MEDICAL AND OBJECTIVE TESTS TO BE APPLIED IN JUDICIALLY DETERMINING THE PERSONAL DOSAGE OF VARIOUS DRUGS. IN THE CASE OF MARIJUANA AND HASHISH, POSSESSION FOR PERSONAL USE CAN BE DEFINED AS ANY AMOUNT NOT EXCEEDING 28 GRAMS AND 10 GRAMS RESPECTIVELY. ACCORDING TO OUR SOURCES, THIS DECREE WILL SOON BE FOLLOWED BY ANOTHER DOUBLING PENALTIES FOR TRAFFICKING. PENALTIES FOR SIMPLE POSSESSION--ONE MONTH TO TWO YEARS IN JAIL AND A FINE--REMAIN UNAFFECTED. END SUMMARY.
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1. IN A LAW DECREE ISSUED APRIL 9, THE GOC HAS MODIFIED BASIC 1973 AND 1974 LEGISLATION CONCERNING SIMPLE POSSESSION OF DANGEROUS DRUGS IN AN ATTEMPT TO BETTER SEPARATE TRAFFICKERS FROM USERS. THOUGH THE NEW DECREE IS SOMEWHAT VAGUE AS TO WHAT CONSTITUTES A PERSONAL DOSAGE OF DRUGS OTHER THAN MARIJUANA AND HASHISH, IT IS AN IMPROVEMENT OVER EARLIER LEGISLATION WHICH LEFT ENTIRELY TO THE TRIAL JUDGE THE DEFINITION OF TRAFFICKING VERSUS POSSESSION.

2. SPECIFICALLY, THE NEW DECREE PROVIDES FOUR METHODS OR TESTS TO DETERMINE WHAT CONSTITUTES A PERSONAL DOSE OF CONTROLLED DRUGS. IN THE FIRST INSTANCE, THE TRIAL JUDGE MUST ASCERTAIN THE AMOUNT OF DRUGS SEIZED, THE CIRCUMSTANCES OF THE SEIZURE, AND WHERE POSSIBLE THE MEDICAL HISTORY OF THE PERSON(S) ARRESTED. SECONDLY, CASES WHERE THE PERSON OR PERSONS ARRESTED ARE UNDERGOING BONA FIDE MEDICAL TREATMENT INVOLVING THE USE OF CONTROLLED DRUGS, A PHYSICIAN'S PRESCRIPTION OR SWORN STATEMENT WILL SUFFICE TO ESTABLISH POSSESSION FOR PERSONAL USE. IN THE CASE OF PERSONS SUFFERING FROM PHYSICAL OR PSYCHOLOGICAL DEPENDENCE ON DRUGS, POSSESSION FOR PERSONAL USE WILL BE DEFINED MEDICALLY FOLLOWING EXAMINATION BY COURT-APPROVED PHYSICIANS. FINALLY, WHEN THE ABOVE MEANS FAIL TO ESTABLISH POSSESSION FOR PERSONAL USE VERSUS TRAFFICKING, THE PERSONAL DOSAGE OF MARIJUANA WOULD BE DEFINED AS ANY AMOUNT NOT EXCEEDING 28 GRAMS (ONE OUNCE). A PERSONAL DOSAGE OF HASHISH WOULD SIMILARILY BE DEFINED AS NOT EXCEEDING 10 GRAMS.

3. THE NEW DECREE DOES NOT RPT NOT MODIFY EXISTING PENALTIES FOR POSSESSION OR TRAFFICKING IN DRUGS. ILLEGAL POSSESSION OF CONTROLLED DRUGS IN COLOMBIA IS STILL PUNISHABLE BY A PRISON SENTENCE OF FROM ONE MONTH TO TWO YEARS AND A FINE. TRAFFICKING IS PUNISHABLE BY THREE TO TWELVE YEARS IN JAIL AND A FINE OF UP TO HALF A MILLION PESOS.

4. ACCORDING TO THE EXECUTIVE SECRETARY OF THE NATIONAL COUNCIL ON DANGEROUS DRUGS, THE NEW DECREE IS BASED IN PART UPON US AND CANADIAN LEGISLATION. THE COUNCIL, THE SAME SOURCE TELLS US, ORIGINALLY PLANNED TO REDUCE THE MINIMUM PENALTY FOR POSSESSION OF SMALL AMOUNTS OF CONTROLLED DRUGS TO A FINE, WHILE AT THE SAME TIME INCREASING THE MAXIMUM PENALTY FOR TRAFFICKING TO 24 YEARS IN PRISON. AS A RESULT OF PREMATURE PRESS PLAY LABELING THE PRO-
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POSED MODIFICATIONS OF LAW AS A MOVE TO "LEGALIZE MARIJUANA," THA NATIONAL COUNCIL OPTED TO DEFINE THROUGH A NEW DECREE ONLY POSSESSION FOR PERSONAL USE. THE COUNCIL ALSO DECIDED TO FOREGO A REDUCTION IN THE PENALTY FOR PERSONAL USE-POSSESSION AND TO ISSUE A SECOND DECREE INCREASING PENALTIES FOR TRAFFICKING. THIS LATTER DECREE IS NOW IN THE DRAFTING STAGE. THE COUNCIL IS ALSO STUDYING WAYS TO BETTER LEGALLY DEFINE SIMPLE POSSESSION OF DANGEROUS DRUGS SUCH AS COCAINE, HEROIN AND MORPHINE. THESE STUDIES

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WILL LIKELY LEAD TO ADDITIONAL DECREE LEGISLATION MORE SHARPLY DELINEATING SIMPLE POSSESSION VERSUS TRAFFICKING IN THESE DRUGS. MEANWHILE, THE COUNCIL IS CASTING ABOUT FOR WAYS TO COUNTER ACCUSATIONS, IN LARGE PART UNFOUNDED AND ILL INFORMED, THAT THE APRIL 9 LAW OPENS THE DOORS FOR WIDE-SPREAD LEGAL USE OF MARIJUANA.

5. COMMENT: IN TERMS OF US INTERESTS, THE NEW LAW, WHILE OPEN TO JUDICIAL INTERPRETATION, WILL LIKELY BE BENEFICIAL. OF THE NINETY-ODD AMERICANS NOW SERVING TIME OR AWAITING TRIAL FOR VIOLATION OF COLOMBIA DRUG LAWS, HALF A DOZEN OR MORE WERE ARRESTED FOR TRAFFICKING WHILE IN POSSESSION OF ONLY A FEW GRAMS OF MARIJUANA OR COCAINE. UNDER THE NEW DECREE, SUCH OFFENDERS WILL MORE LIKELY BE TREATED AS USERS RATHER THAN TRAFFICKERS, WITH RESULTINGLY LOWER SENTENCES AND PERHAPS FASTER TRIALS AS WELL.
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